IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4005 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI AMRA POLA GURGUTIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4005 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR K.T.DAVE, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), District Magistrate, Porbandar, vide order dated March 13, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a Bootlegger within the meaning of Section 2(b) of the Act and six cases under the Prohibition Act are registered against the petitioner which are pending trial and statements of four anonymous witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order/public health as well as public economic policy (fiscal policy) therefore, power under Section 9(2) of the Act is exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Subhadra Patel, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine. To bring home her aforesaid submission she placed reliance on para 9 of the impugned order wherein the detaining authority has stated that with a view to curb the antisocial activities of the petitioner and for the purpose of maintaining public order/public health and for maintaining the public economic policy (fiscal policy) the petitioner is detained. The said observation of the detaining authority itself is clear non-application of mind. According to her the activities of the petitioner cannot be called detrimental to the public economic policy (fiscal policy) and, therefore, on this sole count of non-application of mind, petition deserves to be allowed by quashing and setting aside the order or detention and setting the petitioner at liberty.

5. Mr K.T.Dave, learned AGP has appeared on behalf of the respondent and has opposed the petition by making oral submissions. He, however, does not dispute the factual aspects with regard to the observations made in para 9 of the order of detention. He, therefore, urged to pass appropriate order.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. It is true that on having perusal of para 9 of the impugned order the detaining authority has stated that with a view to curb the antisocial activities of the petitioner and for the purpose of maintenance of public order/public health as well as maintaining the public economic policy (fiscal policy) the petitioner's detention has become necessary and therefore, order of detention is passed. I fail to understand how the alleged activities of the petitioner would adversely affect the maintenance of public economic policy (fiscal policy), therefore, it can be said that the impugned order of detention passed by the detaining authority is in clear non-application of mind and on this sole ground petition deserves to be allowed by quashing and setting aside the order of detention and setting the petitioner at liberty.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated March 13, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*